

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

NORMAN CHAN,

Plaintiff,

vs.

MICHAELS STORES INC.,

Defendant.

FILED: JULY 7, 2008

08CV3851

JUDGE GOTTSCHALL

No. MAGISTRATE JUDGE VALDEZ
AEE

JURY TRIAL

**COMPLAINT
AS AND FOR A FIRST COUNT OF ACTION
(AGE DISCRIMINATION IN VIOLATION TO THE ADEA)**

NOW COMES the Plaintiff, NORMAN CHAN, (“Plaintiff”), by and through his attorney, MICHAEL T. SMITH & ASSOCIATES, and in complaining of the Defendant, MICHAELS STORES INC., (“Defendant”), and states as follows:

JURISDICTION AND VENUE

1. Plaintiff brings this action for benefits under the Age Discrimination in Employment Act of 1967 (hereinafter sometimes referred to as the ADEA), 29 U.S.C. § 621-634, under the specific provisions of the Age Discrimination in Employment Act, viz. 29 U.S.C. § 626(c).
2. Jurisdiction of this action is conferred upon the Court by Section 7(b) of the Age Discrimination in Employment Act, (29 U.S.C. § 626 (b)) and Venue 28 U.S.C. § 1331.
3. The employment practices hereafter alleged to be unlawful were and are now being committed in the Northern District of Illinois, Eastern Division.

PARTIES

4. Plaintiff is an adult person and a resident of Lake County, State of Illinois.

5. Plaintiff was an employee of Defendant until January of 2008.

STATEMENT OF FACT

6. Plaintiff was employed as a Senior Framer with the Defendant.

7. Plaintiff was born on April 19, 1952, and falls within the group protected by the ADEA.

8. At all times material herein and hereinafter mentioned, Defendant has engaged in and employed its employees in commerce.. The Defendant was, and is, and has been, at all times material herein, engaged in commerce within the meaning of the ADEA.

9. Defendant Corporation is an employer within the meaning of the ADEA.

10. Plaintiff was an employee of the Defendant for approximately 4 1/2 years covering the period from May of 2003, until the plaintiff was terminated in violation of the ADEA on, to-wit: January of 2008 and was treated differently than persons not within the protected group when it came to part time positions.

11. On or about September of 2006 and continuously thereafter, while meeting the minimum standards of his employer, the defendant willfully discriminated against plaintiff because of his age. Plaintiff reached 55 years of age before January of 2008.

12. As a result of Defendant's actions, the Plaintiff has been deprived of his wages and employment benefits.

13. In addition, the Plaintiff seeks to be reinstated, but if he is not reinstated, he will continue to be deprived of wages and employment benefits in the future. The Plaintiff is therefore entitled to an award of front pay if reinstatement is not possible.

14. The Defendant's conduct was at all times willful and wanton entitling the Plaintiff to liquidated damages.

PROCEDURAL FACTS

15. Plaintiff protested his unlawful termination and on February 8, 2008, filed charges of the discrimination herein alleged with the Equal Employment Opportunity Commission at Chicago (EEOC), Illinois. A true and correct copy of the Charge of Discrimination is attached hereto as Exhibit "A" and incorporated herein. Efforts by that agency to obtain voluntary compliance by the Defendant with the Age Discrimination in Employment Act have been unsuccessful thereby causing the EEOC to issue a Notice of Right to Sue letter. A true and correct copy of the Notice of Right to Sue is attached hereto as Exhibit "B" and incorporated herein.

16. This action has been timely filed within ninety (90) days of the receipt of the Notice of Right to Sue

AS AND FOR A SECOND COUNT OF ACTION (Title VII-RACE DISCRIMINATION)

Nature of the Action

17. This is an action under Title VII of the Civil Rights Act of 1964 and as amended by inter alia, the Civil Rights Act of 1991, for the Defendant, having subjected Plaintiff, to racial discrimination by failure to treat him the same as other non-Asian employees despite Plaintiff's repeated complaints about same.

18. Plaintiff repeats and realleges each and every allegation set forth above with the same force and effect as more fully set forth herein.

19. Defendant by its action or in actions of its agents treated Plaintiff differently than non-Asians in the handling of his work environment complaints, where non-Asians complaints are handled differently. This wrongful conduct unreasonably interfered with the terms and conditions of Plaintiffs employment and Plaintiff performance in his job

and created a racial work environment. Management failed to take any corrective action for Plaintiff because he is an Asian. All in violation of Title VII of the Civil Rights Act of 1964, 42 U.S.C. Section 2000-c et seq; as amended by inter alia the Civil Rights Act of 1991.

20. By reason of the racial discrimination of Defendant, Plaintiff has suffered a loss of earnings and benefits, in addition to suffering great pain, humiliation and mental anguish, all to his damage.

21. Further, said action on the part of the Defendant was done with malice and reckless disregard for Plaintiffs' protected rights.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff prays that the court order such relief as is necessary to make the plaintiff whole, including:

1. Reinstatement or, alternatively, front pay;
2. Damages, including loss of pay and benefits;
3. Statutory liquidated damages due to the defendant's willful conduct;
4. Attorneys' fees and costs incurred in this action
5. Such other relief as is just and equitable.
6. The plaintiff requests a jury trial of this action.

NORMAN CHAN

BY:/s/ Michael T. Smith
Michael T. Smith
Trial Attorney

Michael T. Smith
440 W. Irving Park Road
Roselle, IL 60172
(847) 895-0626
Attorney Number #6180407IL

CHARGE OF DISCRIMINATION

This form is affected by the Privacy Act of 1974. See enclosed Privacy Act Statement and other information before completing this form.

Charge Presented To:

Agency(ies) Charge No(s):

☐ FEPA☒ EEOC**440-2008-02501****Illinois Department Of Human Rights**

and EEOC

State or local Agency, if any

Name (indicate Mr., Ms., Mrs.)

Mr. Norman Chan

Home Phone (Incl. Area Code)

(847) 855-9415

Date of Birth

04-19-1952

Street Address

City, State and ZIP Code

7019 Bennington Dr., Gurnee, IL 60031

Named is the Employer, Labor Organization, Employment Agency, Apprenticeship Committee, or State or Local Government Agency That I Believe Discriminated Against Me or Others. (If more than two, list under PARTICULARS below.)

Name

MICHAELS STORES INC #9961

No. Employees, Members

500 or More

Phone No. (Include Area Code)

(847) 855-7462

Street Address

City, State and ZIP Code

6635 Grand Ave, Gurnee, IL 60031

Name

No. Employees, Members

Phone No. (Include Area Code)

Street Address

City, State and ZIP Code

DISCRIMINATION BASED ON (Check appropriate box(es).)

☒ RACE ☐ COLOR ☐ SEX ☐ RELIGION ☐ NATIONAL ORIGIN
☐ RETALIATION ☒ AGE ☐ DISABILITY ☐ OTHER (Specify below.)

DATE(S) DISCRIMINATION TOOK PLACE

Earliest

Latest

07-27-2007**01-11-2008**☐

CONTINUING ACTION

THE PARTICULARS ARE (If additional paper is needed, attach extra sheet(s)):

I began my employment with Respondent on May 18, 2003. I was employed as a Senior Framer. During my employment, I was subjected to different terms and conditions of employment, disciplined, and discharged.

I believe that I have been discriminated against because of my age, 55, DOB: 04/19/52), in violation of the Age Discrimination in Employment Act of 1967, as amended. I also believe that I have been discriminated against because of my race, Asian, in violation of Title VII of the Civil Rights Act of 1964, as amended.

RECEIVED EEOC**FEB 12 2008****CHICAGO DISTRICT OFC**

I want this charge filed with both the EEOC and the State or local Agency, if any. I will advise the agencies if I change my address or phone number and I will cooperate fully with them in the processing of my charge in accordance with their procedures.

NOTARY – When necessary for State and Local Agency Requirements

I declare under penalty of perjury that the above is true and correct.

I swear or affirm that I have read the above charge and that it is true to the best of my knowledge, information and belief.

SIGNATURE OF COMPLAINANT

Feb 12, 2008

Date



Charging Party Signature

SUBSCRIBED AND SWORN TO BEFORE ME THIS DATE
(month, day, year)

Exhibit "A"

DISMISSAL AND NOTICE OF RIGHTS

To: **Norman Chan**
7019 Bennington Dr.
Gurnee, IL 60031

From: **Chicago District Office**
500 West Madison St
Suite 2800
Chicago, IL 60661

CERTIFIED MAIL 7001 1940 0003 8824 7534



On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.

EEOC Representative

Telephone No.

440-2008-02501

Nanisa Pereles,
Investigator

(312) 353-8739

THE EEOC IS CLOSING ITS FILE ON THIS CHARGE FOR THE FOLLOWING REASON:



The facts alleged in the charge fail to state a claim under any of the statutes enforced by the EEOC.



Your allegations did not involve a disability as defined by the Americans With Disabilities Act.



The Respondent employs less than the required number of employees or is not otherwise covered by the statutes.



Your charge was not timely filed with EEOC; in other words, you waited too long after the date(s) of the alleged discrimination to file your charge



The EEOC issues the following determination: Based upon its investigation, the EEOC is unable to conclude that the information obtained establishes violations of the statutes. This does not certify that the respondent is in compliance with the statutes. No finding is made as to any other issues that might be construed as having been raised by this charge.



The EEOC has adopted the findings of the state or local fair employment practices agency that investigated this charge.



Other (briefly state)

- NOTICE OF SUIT RIGHTS -

(See the additional information attached to this form.)

Title VII, the Americans with Disabilities Act, and/or the Age Discrimination in Employment Act: This will be the only notice of dismissal and of your right to sue that we will send you. You may file a lawsuit against the respondent(s) under federal law based on this charge in federal or state court. Your lawsuit **must be filed WITHIN 90 DAYS of your receipt of this notice**; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a state claim may be different.)

Equal Pay Act (EPA): EPA suits must be filed in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that **backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.**

On behalf of the Commission

John P. Rowe
John P. Rowe,
District Director

4/10/08
 (Date Mailed)

Enclosures(s)

cc: **MICHAELS STORES INC #9961**

Exhibit "B"